

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

QUITMAN CARTER,)	
)	
Movant,)	
)	
v.)	No. 1:08CV92 CDP
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on movant’s motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The motion will be summarily denied.

Movant’s criminal judgment became final on February 23, 2006. United States v. Carter, 1:05CV105 CDP (E.D. Mo). Movant filed his first § 2255 motion on March 26, 2007. Carter v. United States, 1:07CV49 CDP (E.D. Mo). The Court denied the motion because it was untimely. Id.

Movant now attempts to attack his sentence again in a document he has titled “Petition for Writ of Mandamus.” Notwithstanding the title, the motion is one to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. E.g., Melton v. United States, 359 F.3d 855, 857 (7th Cir. 2004) (“Prisoners cannot avoid the AEDPA’s rules by inventive captioning.”). In his motion, movant states that the Court should vacate his sentence because of newly discovered evidence.

Under 28 U.S.C. § 2255:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense . . .


Absent certification from the United States Court of Appeals, this Court lacks authority under § 2255 to grant movant's requested relief. As a result, the motion shall be dismissed. See Rule 4 of the Rules Governing § 2255 Proceedings (mandating summary dismissal of § 2255 motions where it plainly appears that the party is not entitled to relief).

Accordingly,

IT IS HEREBY ORDERED that movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [#1] is **DENIED**.

An Order of Dismissal shall accompany this Memorandum and Order.

Dated this 19th day of June, 2008.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE